

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

GUEST SERVICES, INC. d/b/a
CANAAAN VALLEY RESORT¹

Employer

and

Case 6-RC-12092

LABORERS' LOCAL 814, affiliated with
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before David L. Shepley, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.³

Upon the entire record in this case,⁴ the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by August 12, 2002.

⁴ Both the Employer and the Petitioner filed timely briefs in this matter, which have been duly considered by the undersigned.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.⁵

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer has a 25-year lease with the State of West Virginia to operate a resort in a 6200-acre state park near Davis, West Virginia, known as the Canaan Valley Resort (herein the Resort). The Resort includes, inter alia, a main lodge, a golf course, campgrounds, cabins, a nature center, swimming pools, an ice skating rink, and a downhill ski operation located approximately six miles from the lodge and which operates on a seasonal basis from mid-November until mid-to-late-March, depending on snow conditions. The skiing season is the Resort's busiest time of year.

As amended at the hearing, the Petitioner seeks to represent a unit of all full-time and regular part-time and seasonal employees employed by the Employer at the Resort; excluding seasonal employees employed in certain departments of the ski area, particularly ski instructors, ski patrol employees, ticket sales, lift operators, snow-making employees, ski rental shop employees, snow groomers, parking lot attendants, nursery employees and bus drivers and guards, professional employees and supervisors as defined in the Act. Although the Employer otherwise agrees with the Petitioner on both the scope and composition of the unit, the Employer, nevertheless, contends that the petitioned-for unit is too limited in scope and must

⁵ Notwithstanding the Employer's assertion to the contrary, the record evidence establishes, and I find, that the Petitioner constitutes a labor organization within the meaning of Section 2(5) of the Act. The Petitioner exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, benefits, hours of work and other terms and conditions of employment. It has a formal structure including the existence of a constitution and bylaws and has been recognized or certified as the collective-bargaining representative for a number of bargaining units. See Yale New Haven Hospital, 309 NLRB 363 (1992); Yale University, 184 NLRB 860 (1970).

include the aforementioned ski area seasonal employees since these employees enjoy a strong community of interest with other unit employees which mandates their inclusion in the unit. In addition, the Employer would exclude Dana Bennett, Mary Darr, Cecilia Vance, Chris Lambruno and Cheryl Evans as office clerical employees and/or confidential employees, and Susan Randolph and Lenora Testerman as office clerical employees. Finally, the Employer, contrary to the Petitioner, would exclude Judy Smith, Amy Poling and Rosaleigh Vance as supervisors within the meaning of the Act. There are approximately 150 employees in the petitioned-for unit and approximately 270 employees in the overall unit averred by the Employer to be the only appropriate unit. There is no history of collective bargaining for any of the employees involved herein. The Petitioner has indicated a willingness to proceed to an election in any unit found to be appropriate herein.

The Employer's Operation

As noted, the Employer operates a year-round Resort in the Canaan Valley State Park with the primary focus of the Resort's recreational activities being the downhill skiing operation during mid-November until the end of March. The Employer's workforce is comprised of both permanent and seasonal employees, with the majority of the seasonal employees employed during the winter in the ski area. During the 2001-2002 winter season, the Employer employed approximately 143 seasonal employees in the ski area, which number represented a slight decrease from the total number of seasonal employees employed during the previous winter season. Approximately 30 to 40 seasonal employees are employed by the Employer during the summer season in various areas of the Resort.

The parties are in agreement that certain seasonal employees should be included in the unit; i.e., those seasonal employees who work exclusively during the summer season, those seasonal employees who work at the ski area during the winter and other operations during the summer,⁶ those seasonal employees employed as maintenance

⁶ As more fully set forth herein, there are approximately 12 to 15 seasonal employees in this category.

employees,⁷ and those seasonal employees who only work at the ski area in the winter and are employed as food and beverage workers in the ski lodge dining areas, as housekeepers, or as sales employees in the ski lodge's retail shop.⁸ As noted, the Petitioner would exclude those seasonal employees who only work during the winter season at the ski area in the following ten classifications: ski instructors, ski patrol, ski rental, ski parking lot attendants, snowmakers, ski ticket sales, snow groomers, bus drivers, ski nursery, and ski lifts.⁹ The Petitioner asserts, in its post-hearing brief, that these seasonal employees should be excluded from the unit on the ground that they do not have a reasonable expectation of re-employment from season to season.¹⁰ In addition, the Petitioner contends that these seasonal employees do not share a sufficient community of interest with the petitioned-for employees to be included in the unit.

The Resort is under the overall supervision of Managing Director Steve Logue. Reporting to Logue are, inter alia, Resident Manager Sam Collins, who is responsible for guest reservations, housekeeping, laundry and the revenue operations at the golf course, ski area,

⁷ Maintenance employees, both permanent and seasonal, work interchangeably in both the Resort's ski areas and park areas.

⁸ During the 2001-2002 ski season, 15 seasonal employees worked as food and beverage employees, six seasonal employees worked as housekeepers, and two to three seasonal employees worked in the ski lodge retail shop.

⁹ During the 2001-2002 ski season, 59 seasonal employees were employed as ski instructors, 6 as ski patrol, 11 as ski rental employees, 5 as snowmakers, 7 as ski ticket sales employees, one as a snow groomer, 3 as bus drivers, 1 as a ski nursery employee, and 8 as ski lift employees. The record reveals that one employee, Jamie Lawrence, works as both a summer and winter seasonal employee on the ski lifts. In the summer, he operates a ski lift transporting tourists to the top of the mountain for the view. Although the record is not clear, it does not appear that the Petitioner seeks to include Lawrence in the unit.

Also, approximately three to four employees who work as snow groomers in the winter also work as summer seasonal employees on the golf course staff. Two summer seasonal employees who work at the outdoor pool also work at the ski nursery for the winter. Apparently, the Petitioner does not seek to exclude these employees from the unit. In addition, the record reveals that two unnamed employees who work as summer seasonal employees in the recreation department also work as ski instructors in the winter. Again, it does not appear that the Petitioner would exclude these employees from the unit.

¹⁰ The record reveals that with respect to the job classifications at issue, a minimum of fifty percent of the seasonal employees in each job classification return the following season. Indeed, many of those seasonal employees have over three years of employment on a seasonal basis (49 employees), and some have as many as 15 years of service during the ski season.

other recreational areas such as the campground, and the retail shops; Food and Beverage Director Bryan Forsythe, who is responsible for all the dining areas and snack bars throughout the Resort; Bob Bennett, who is responsible for the management of the golf course and ski areas, and Chief Engineer Lawrence Rhodes.

As previously noted, the Resort's various physical structures and recreational areas are located throughout the State Park. The main lodge is a two-story structure where the Employer's executive offices, engineering, warehouse, sales and catering and housekeeping departments are located. Several dining rooms, a snack bar, an indoor pool, spa and a retail gift shop are also located there. Five two-story wings are attached to the main lodge and house the Resort's guest rooms. There are 25 rooms per floor or a total of 250 rooms. Guests may also obtain lodging accommodations either in one of 23 cabins located one mile to 3.5 miles from the main lodge or at the campground area which is located several miles from the main lodge. The campground area is staffed in the summer only by four seasonal employees.

In addition to lodging, the Resort offers a myriad of recreational activities located throughout the State Park. As noted, an indoor pool and spa are located in the main lodge. Adjacent to the main lodge is an outdoor pool and a miniature golf course, which are open during the summer months, and an ice skating rink, which is operated during the winter season. Seasonal employees are employed as lifeguards at the outdoor pool and as miniature golf and ice skating rink attendants. A craft center is located in the main lodge. In addition, the Resort operates a nature center, which is approximately 2.5 miles from the main lodge. At the nature center, the Resort rents mountain bikes during the summer and snow shoes and cross-country skis during the winter. Resort employees also conduct walking tours of the State Park from the nature center and conduct nature classes. The Resort's golf course is located approximately 3.5 miles from the main lodge and is open, generally, from mid-March to late October. Approximately seven seasonal employees work at the golf course as starters, attendants and course maintenance employees. As noted, certain of these employees work as seasonal

employees at the ski area in the winter as snow groomers. A small food and beverage operation and a retail shop are located at the golf course.

Finally, the Resort offers downhill skiing at the ski area during the winter. The ski area, located approximately 6.5 miles from the main lodge, includes a ski lodge which has two large food and beverage operations, a retail ski sales shop, and a ski rental area. The ski lodge does not offer overnight guest accommodations. Guests of the Resort are transported to and from the main lodge in the winter by bus drivers. The ski lodge's food and beverage areas are not open during the summer season, except for special functions. During the summer, the Resort operates, as noted, one ski lift to take tourists to the top of the mountain for a scenic overlook. Approximately three or four employees work at the ski area in the summer operating the lift and operating the ski retail shop. The employee who works in the ski retail shop during the summer also works there during the ski season along with three or four seasonal employees.

The Ski Operation and the Unit Placement of the Ski Area Seasonal Employees

As set forth previously, the ski operation is staffed with approximately 140 seasonal employees who are laid off at the end of the ski season. Approximately a dozen of these employees are "rehired" by the Employer to work as summer seasonal employees at non-ski areas of the Resort. In addition, as noted, the Petitioner and the Employer agree that the winter seasonal employees who work in the ski lodge food and beverage facilities, the ski lodge retail shop and those winter seasonal employees who work as housekeepers at the ski lodge should be included in the unit. The Petitioner, contrary to the Employer, would exclude the remaining seasonal employees who work at the ski area and do not work at the Resort at any other time of the year. The following is a summary of the job duties of each of the specific ski area job classifications at issue:

(1) Ski School – These employees are hired to provide ski lessons to guests. Of the 59 ski instructors employed during the 2001-2002 season, approximately 10 to 12 worked 40 hours a week during the ski season, usually Monday through Friday. In addition, 39 to 40 of the ski instructors were scheduled to work on a part-time basis on the weekends while the

remaining ski instructors worked only one weekend shift.¹¹ The ski instructors report to Tammy Elza, the ski school director. Elza reports to Bob Bennett, manager of the golf course and ski area.

(2) Ski Patrol – Ski patrol employees are responsible for patrolling the slopes and providing assistance to skiers. These employees report to Mike Chaney, Assistant Mountain Operations. Chaney reports to Bennett.

(3) Ticketing – These employees work at the ski lodge and sell lift tickets to guests and report to retail Store Manager Theresa Chaney. Theresa Chaney reports to Resident Manager Sam Collins.

(4) Lift Operators – These employees report to Bennett and operate the chairlift which transports skiers to the top of the mountain.

(5) Ski Rental – Ski rental employees adjust and repair ski rental equipment and rent the ski equipment to the public. These employees report to Ski Rental Manager Larry Snyder, who reports to Collins.

(6) Snow Groomers – Groomers operate heavy machinery for the purpose of grooming slopes. The groomers report directly to Bennett.

(7) Snow Making – These employees, who report to Bennett, are hired to make and maintain the base of snow at the ski area.

(8) Bus Drivers – Bus drivers transport guests from the lodging facilities to the ski area. They report to Chief Mechanic, Mountain Operations Ted Vance. Vance reports to Bennett.

(9) Nursery – These employees provide care for small children when their parents are skiing.

(10) Parking Lot Attendants – These employees, who report to Bennett, park the cars in the ski area parking lot for members of the public who come to the ski area to ski.

¹¹ Each weekend shift is at least nine hours in length.

The Petitioner contends that the winter seasonal employees at issue should be excluded from the unit on the ground that they are not currently employed and will not be employed during the eligibility period. The Petitioner also asserts that these employees have no continuing interest in employment with the Employer since none have a reasonable expectancy of recall, as evidenced by the high turnover rate and the fact that many of these employees are high school or college students who only work one winter season. For the reasons set forth below, I find these contentions of the Petitioner to be without merit.

The record reveals that all seasonal employees, whether working during the winter or summer sessions, are laid off at the end of the season, receive no guarantee of re-employment, and must be “rehired” for the next season if they are to be employed. These considerations, however, apply equally to those winter seasonal employees the Petitioner would exclude as well as to those seasonal employees who work as ski area food and beverage, retail shop and housekeeping employees who the Petitioner would include in the unit.

In true seasonal cases where the unit is comprised solely of seasonal employees, and there are no seasonal employees employed at the time of the Decision and Direction of Election, the Board will nevertheless direct an election if the return rate of seasonals is in the 30 percent range and it will defer the election date until a time at or near the peak of the next season without the requirement of a new showing of interest. See e.g. Bogus Basin Recreation Association, 212 NLRB 833 (1974); Kelly Brothers Nurseries, Inc., 140 NLRB 82, 85 (1962).

In those cases involving year-round operations where the employers have a core-work force but experience a series of seasonal peaks, the Board is confronted with the task of balancing the goals of holding a prompt election, while enfranchising the greatest number of eligible employees, assuming the seasonal or extra employees otherwise enjoy a sufficient community of interest with the permanent employees to be included in the unit. Thus, assuming the seasonal employees enjoy a community of interest with the permanent employees and there exists a significant rate of reemployment among the seasonal employees, the election may be delayed until the employer’s peak season, e.g. Dick Kelcher Excavating Co., 236 NLRB 1414

(1978), or held immediately during a nonpeak season where the vast majority of the seasonal employees live in the immediate area. E.g. Aspen Skiing Corporation, 143 NLRB 707 (1963).

In addition, where an employer has year round operations with a fluctuating need for seasonal employees and an immediate election is directed during the nonpeak season, the Board has devised eligibility formulas to include those seasonal employee who have worked a certain amount of time in a certain, defined period before the eligibility date, reasoning that such a formula balances the goals of holding a prompt election while also enfranchising the greatest number of eligible voters whose regularity and currency of employment demonstrates that they have a substantial and continuing interest in the unit. See e.g. Capitol Insulation Company, Inc., 233 NLRB 902 (1977); Daniel Ornamental Iron Co., Inc., 195 NLRB 334 (1972). In this regard, the Board has long held that in those circumstances, the fact that certain seasonal employees eligible to vote pursuant to the devised eligibility formula may not again work for the employer does not require a rejection of the formula or require a finding that seasonal employees who meet the formula's criteria should not be allowed to vote in an election held during the nonpeak season. See Saltwater, Inc., 324 NLRB 343 (1997), and cases cited therein.

In the instant case, based upon the above, the initial issues to be resolved are whether the ski area seasonal employees, on the whole, enjoy a significant rate of reemployment and otherwise share such a community of interest with the other unit employees to be included in the unit. If the answer to those questions are affirmative, then the issue remaining is whether to delay the election to near or at the peak of the winter season or to hold an immediate election and devise an eligibility formula for the seasonal employees, based upon past work experience. If an immediate election is directed, the Employer has requested that a mixed manual-mail ballot election be held to enable the largest number of employees eligible to vote to cast ballots in the election.

As set forth previously, the record affirmatively establishes that the seasonal ski area employees the Petitioner seeks to exclude have a significant reemployment rate of over 50 percent, with a substantial number being employed at least three winter sessions, thus

suggesting that those winter seasonal employees meeting eligibility formula criteria if an immediate election is directed will be working for the Employer again in the coming ski seasons.¹² While it may be true that many of the ski seasonal employees who otherwise meet any eligibility formula that may be devised herein will not return because they are no longer students only looking for seasonal work, or may not return for other reasons, this consideration is not a compelling reason for excluding ski seasonal employees from the unit. Saltwater, Inc., supra.¹³

With respect to the issue of whether the various groupings of ski seasonal employees share such a community of interest with the other unit employees to be included in the unit, I first note that the classifications of employees the Petitioner seeks to include in the unit encompass a varied and wide range of job tasks, including, inter alia, employees acting as guest reservation employees, housekeeping and janitorial employees, food and beverage employees, maintenance employees, employees working in the retail shops, golf course attendants, lifeguards, and employees engaged in providing recreational services to guests. All of the Employer's non-managerial seasonal workforce, including ski instructors, are hourly paid and share the same fringe benefits. All seasonal employees are subject to the same personnel policies set forth in the Employer's seasonal employee handbook. Many employees, both permanent and seasonal, are, pursuant to the Resort's policy, cross-trained within and across occupational groups.

The record affirmatively establishes that certain of the ski seasonal employees the Petitioner seeks to exclude perform job tasks which are functionally similar, and in some cases identical to those tasks performed by unit employees. The parking lot attendants at the ski area

¹² The Employer estimated that approximately 60 percent of its ski seasonal employees reside in the immediate area of the Resort. This consideration supports the suggestion that many of the ski seasonal employees will be employed at the Resort in the future. See Aspen Skiing Corporation, supra at 711.

¹³ I note that the ski seasonal food and beverage, housekeeping, and ski retail shop employees the Petitioner would include in the unit have a very low percentage rate of return based upon an examination of those employees' work histories. Thus, of the 21 seasonal food and beverage and housekeeping employees employed at the ski area in 2001-2002, 20 were new hires.

perform the same job tasks as those parking lot attendants employed at other areas of the Resort whom the Petitioner seeks to include in the unit. Moreover, the record reveals that an employee whom the Petitioner would include in the unit works at the ski area in the winter as a parking lot attendant and works as a golf course attendant in the summer.

Similarly, the staff of the ski area nursery is comprised of both employees who work only in the winter at the nursery and of employees who work at the ski nursery in the winter and at the outdoor pool in the summer.

Further, employees working in the ski area ticket operation perform functionally similar job tasks as those of many other employees working at the Resort whom the Petitioner would include in the unit, particularly those employees working in the retail shops. Moreover, the record reveals that three employees the Petitioner would include in the unit, who work in the summer as golf course attendants, work as ski area ticket salespersons on the weekends during the ski season.¹⁴

In addition, employees working in the snow-making department do not appear to perform job tasks functionally dissimilar to those performed by many employees in the proposed unit. Although snow-making employees receive on-the-job training with respect to the methods of making and maintaining the snow pack, two employees the Petitioner would include in the unit work as golf course attendants in the summer and snow-making employees in the winter.

Based upon the above and the record as a whole, noting particularly that ski seasonal employees employed as parking lot attendants, nursery employees, ticket sales employees and snow-making employees perform low skilled job tasks functionally similar to many of the job tasks performed by employees in the proposed unit and that certain employees whom the Petitioner would include in the unit perform these job tasks in the winter, I find that there is no discernible reason advanced by the Petitioner for excluding ski seasonal employees employed

¹⁴ The Petitioner avers that ticket sellers do not share a community of interest with the proposed unit because some are high school and college students who work flexible schedules. This averment is based on the general testimony of John Teter, the ski area manager for the 1996 to 2000 period.

in those occupation groups, and that it would be entirely inconsistent to exclude these ski seasonal employees while including those ski seasonal employees the Petitioner seeks to represent who work as ski retail shop and food and beverage employees. I shall, therefore, include the seasonal employees who work in these job classifications in the unit.

Ski rental employees and lift operators appear to be employees with general skills similar in nature to the skills possessed by many other employees in the proposed unit, particularly, for example, employees who rent and perform minor maintenance on the mountain bikes, snowshoes, and cross-country skis at the nature center and life guard attendants at the pools. Thus, it appears that lift operators simply help passengers onto and off of the lifts and understand how to start or stop the machinery. The staff of the ski rental shop is composed of employees acting as cashiers and ski repairers. Accordingly, in these circumstances, given the scope of the Petitioner's unit request, it cannot be concluded that these employees have interests so dissimilar to those of the unit employees to warrant their exclusion from the unit. I shall therefore include the seasonal employees employed as lift operators and in the ski rental shop in the unit herein found to be appropriate.

Ski seasonal employees employed as snow groomers and bus drivers appear to possess certain specialized skills. Thus, bus drivers are required to possess a commercial driver's license in order to operate the buses. Groomers drive sno-cats which are used to groom the ski runs. It does not appear that groomers are responsible for the maintenance and repair of this equipment, but many employees the Petitioner seeks to represent, particularly those employees in the Resort's maintenance and engineering departments, possess specialized mechanical skills and, in all probability, are more skilled than those bus drivers and groomers. Thus, for example, certain employees in the engineering department who work with refrigerants are required to be certified.¹⁵ Accordingly, in these circumstances, given the scope

¹⁵ It appears that the maintenance and repair of the sno-cats, buses and lifts is the responsibility of employees employed in the maintenance and engineering departments. These employees work throughout the Resort, and are employees, as noted, whom the Petitioner would include in the unit.

of the Petitioner's unit request, I cannot conclude that groomers and bus drivers have interests so dissimilar from the petitioned-for employees to warrant their exclusion from the unit. To do so would be arbitrary and split a group of employees with substantial common interests. I shall, therefore, include seasonal employees employed as snow groomers and bus drivers in the unit herein found to be appropriate.

There remains for consideration the unit placement of the seasonal employees who act as ski instructors and ski patrol. As noted, the primary function of the ski patrol is to maintain safety on the mountain, and that of the ski instructors is to instruct skiers in various aspects of skiing.

Of the 59 ski instructors who worked during the past ski season, 10 to 12 worked a full-time schedule, Monday through Friday, while the remaining instructors worked only on the weekends. This latter group of instructors, for the most part, hold full-time jobs elsewhere.¹⁶ The majority of ski instructors are required to be certified. However, those ski instructors who only teach children are not. All ski instructors are hourly paid and are not paid by the lesson. Ski instructors' hourly wage depends on the number of seasons worked. Prior to being hired for the upcoming season, the weekend ski instructors must commit to work a minimum number of weekend shifts, the number depending on whether the instructors desire to work both Saturdays and Sundays or only one weekend day.¹⁷ Schedules are posted once a month for the ski instructor staff.

If ski instructors are not given other lessons at any particular time during their shifts, they perform other duties around the ski area, in the ski rental shop or engage in training. It does not appear that ski instructors are entitled to "free" skiing at the Resort. Finally, the record reveals

¹⁶ Thirty-one of the instructors have worked three or more ski seasons at the Resort.

¹⁷ Ski instructors desiring to work both Saturdays and Sundays must commit to work at least 25 to 30 shifts during the ski season. Ski instructors for the upcoming ski season are recruited from the past season's staff. Additional ski instructors are recruited through a job air conducted by Ski School Director Elza and by other means including ski magazine advertisement.

that two recreation staff employees worked as ski instructors the past season. It appears that the Petitioner would include these two employees in the unit.

Ski patrol staff must also be highly skilled skiers trained in rescue and life saving techniques. All ski patrol staff must attend a school and be recertified each year. Certain members of the ski patrol staff work a full-time schedule during the ski season while others only work on the weekends. There is no evidence that the ski patrol employees perform services in other areas of the Resort. The ski patrol appears to operate as a homogeneous crew, out of its own trailer at the ski area.

Based upon the above, it appears that the ski instructors and ski patrol may possess qualifications, skills and interests which are not closely related to the functions of members of the proposed unit. In this regard, the Board, in Heavenly Valley Ski Area, 197 NLRB 993 (1972), found that it would be inappropriate, based upon the circumstances presented therein, to exclude ski instructors from a proposed unit of ski lift and tram operators and ski patrolmen. In that case, the Board further held that, contrary to the contention of the employer therein, other employees at the Resort, including parking lot attendants, ski rental shop employees, ticket sellers and other groupings of employees did not have such a community of interest with the proposed unit that their exclusion from the unit could be considered arbitrary and improper. In the instant case, I note that the Petitioner would appear to include in the unit two ski instructors who work in the summer at the Resort in a different capacity. Moreover, given the scope and breadth of the Petitioner's unit request, together with my finding that other ski area seasonal employees whom the Petitioner seeks to exclude based upon their community of interest with the petitioned-for employees must be included in the unit, I cannot conclude based upon the record evidence before me at this time whether any community of interest the ski instructors and ski patrolmen share with the proposed unit is tenuous or whether the exclusion of the ski instructors and ski patrolmen would be arbitrary and would split a group of employees with substantial common interests. Accordingly, I shall permit the ski instructors and ski patrolmen to vote in the election herein subject to challenge.

Office Clerical and Confidential Employees

As previously noted, the Employer, contrary to the Petitioner, would exclude Susan Randolph and Lenora Testerman as office clerical employees and Dana Bennett, Mary Darr, Cecelia Vance, Chris Lambruno and Cheryl Evans as either office clerical employees or confidential employees.

a. Susan Randolph, Lenora Testerman and Cheryl Evans

Susan Randolph and Lenora Testerman are both hourly paid employees who work under the supervision of the Resort's Director of Sales, Steve Drumheller, who is responsible for the overall supervision of the Resort's Sales and Administrative Offices. Randolph, whose title is conference services assistant, coordinates gift certificate group sales; acts as a receptionist assistant,¹⁸ and coordinates convention sales, including the convention group's arrival and departure dates, number of rooms required, method of payment, ski package entitlements and food and beverage requirements. She works in an open part of the front office area where the Employer's sales department and customer service department are located.

Lenora Testerman's primary responsibility is to perform the necessary clerical functions to support the Resort's advertising and promotion as the assistant to the Resort's three sales managers.¹⁹ In this regard, she prepares and maintains spread sheets on the amount of monies the Resort spends on advertising and marketing.

Cheryl Evans is a conference service liaison and is the administrative assistant to convention service manager Cindy Martin, whom the parties agree should not be included in the unit. The convention service office is located in the sales and administrative offices. In the performance of her duties, Evans records revenues from conventions and other group meetings and enters that information into the computer system, which is then transmitted to the

¹⁸ Although the record is not entirely clear, it appears that other employees performing receptionist type duties are included in the unit. Certainly, there is no contention, for example, that reservationists and front desk employees should not be included in the unit.

¹⁹ The parties are in agreement that the sales managers should be excluded from the unit.

Employer's corporate office. Evans also performs such clerical functions as typing, answering telephones, copying and preparing and mailing correspondence. In addition, she regularly assists in the setting up of conference and meeting rooms and other gatherings by setting the tables and doing other necessary tasks. In this regard, she assists the male employee who is primarily responsible for setting up the conference and meeting rooms, e.g. setting up A/V equipment and placing tables and chairs in the proper location. The parties are in agreement that this employee is properly included in the unit.

With respect to the unit placement of Randolph, Evans and Testerman, the record indicates that they spend substantial amount of their work time engaged in clerical type tasks which are office clerical in nature. However, the fact that these employee are primarily engaged in clerical type tasks does not warrant their exclusion from the unit on that ground. In the hotel industry, the Board has long held a petitioned-for overall unit of hotel employees, including clerical employees, to be appropriate in view of the functional integration and mutual interests of the employees in that industry. In this regard, it has been the Board's policy to treat hotel clerical employees as operating personnel rather than as office clericals for the purpose of hotel unit questions. See Islands Holliday, Ltd d/b/a Coco Palms Resort Hotel, 201 NLRB 522 (1973); Penn-Keystone Realty Corp., 191 NLRB 800, 803 (1971).

The Employer herein, because it operates a year-round Resort, is engaged in operations more varied in scope than those operations found at many hotels and convention centers. But, at its core, the Employer's facilities and organizational structure have been designed specifically, like most hotels, to provide a functionally integrated enterprise whose purpose is to provide lodging, dining, and related services to its guests and patrons. Thus, while the employees perform a variety of duties, their common objective, including the clerical employees described above, is to provide a highly integrated group of services, directly and indirectly, for

the Resort's guests.²⁰ Here, the Petitioner seeks to include employees performing clerical type functions in the unit. Accordingly, I find that it is inappropriate to exclude clerical employees from the unit. See Islands Holiday, Ltd. d/b/a Coco Palms Resort Hotel, supra; Penn-Keystone Realty Corp., supra. I shall therefore include clerical employees, including Susan Randolph and Lenora Testerman in the unit found appropriate herein.

Their remains for consideration the question of whether Cheryl Evans should be excluded from the unit on the ground that she is a confidential employee. The Employer asserts that Evans is a confidential employee because of her responsibility of "reporting confidential financial information concerning convention revenue" to corporate headquarters.

"Confidential employees" are defined as employees who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies with respect to labor relations or regularly substitute for employees having such duties. Under Board policy, they are excluded from the bargaining unit. E.g. Bakersfield Californian, 316 NLRB 1211 (1995); Ladish Co., 178 NLRB 90 (1969); Chrysler Corporation, 173 NLRB 1046 (1968); B. F. Goodrich Co., 115 NLRB 722 (1956). Employees who handle material dealing only with the financial matters of the employer, even confidential financial data, are not confidential. Dinkler-St. Charles Hotel, 124 NLRB 1302, 1303 (1959) (accounts receivable clerk, secretary to the sales manager, and multilith operator, who prints all the documents dealing with accounts, sales and catering department, are not confidential employees); Ohio State Legal Services Assn., 239 NLRB 594, 599-600 (1978) (accounting specialist responsible for the employer's financial records, maintaining its accounts, and preparing its budget and tax statements, is not a confidential employee); Dun & Bradstreet, Inc., 240 NLRB 162, 163 (1979) (credit reporters are not confidential employees).

²⁰ As noted, Randolph and Evans act as liaisons for servicing the Resort's convention business. Testerman is responsible for engaging in tasks supporting the Resort's advertising and promotional activities.

In the instant case, the Employer does not contend, nor is there any evidence suggesting, that Evans assists or acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations. Her access to certain of the Employer's financial information concerning convention revenue is insufficient to confer upon her confidential employee status. I shall, therefore, include Cheryl Evans in the unit herein found appropriate.

b. Chris Lambruno

Lambruno reports to the Employer's controller, Netti Johnson, and, according to resident manager Sam Collins, is the clerk in the shipping and receiving area. In the performance of his duties, Lambruno prepares requisition forms needed to obtain all non-food supplies for the Resort. The requisition forms are based upon purchasing requests made by each of the Resort's department managers. According to Collins, the majority of Lambruno's work time is "data entry . . . , clerical, filling supply requests, purchase orders, making telephone calls to get supplies in from various vendors." He also, according to Collins, is responsible for receiving and deliveries and collecting all monies from the Resort's vending machines. Collins also testified that as part of his duties, Lambruno is vested with the authority to obtain competitive bids from entities for work to be done for the Resort which is not covered by national contracts (such as printing work) and to accept the lowest bid.²¹

Based upon the above and the record as a whole, the record affirmatively establishes that Lambruno is engaged in tasks which are clerical in nature and that he does not act in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations. I therefore find that Lambruno is a clerical employee and I shall, therefore, include him in the unit herein found to be appropriate.

²¹ The record contains no other information concerning Lambruno's job responsibilities.

c. Mary Darr, Cecelia Vance and Dana Bennett

Darr, Vance and Bennett are hourly paid accounting clerks working in the Resort's accounting department. They report to controller Netti Johnson. Bennett is a part-time clerk, who works with the accounts payable and daily cash reports, pulling together information concerning daily financial transactions and reconciling the various accounts and assets in the preparation of the weekly operating report that is sent to the corporate office. The operating report contains all revenues and expenses for the relevant period.

Darr is a senior accounting clerk in charge of bank deposits, reconciliations, accounts receivable, and direct billing. She also assists in the preparation of reports concerning daily revenues and expenses.

Vance is an accounting clerk who is primarily responsible for accounts payable. She collects payments on bills as they come in, obtains proper coding for the payments, and enters the information into the computer system.

The Employer contends that Darr, Vance and Bennett are confidential employees because they work directly with sensitive, financial information on a daily basis which, if obtained by the Petitioner, would give it a significant strategic advantage in negotiations, particularly with regard to wages and benefits.

The functions and duties of the accounting clerks are clearly office clerical in nature. There is no assertion or evidence that the accounting clerks act in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations. As noted above, contrary to the contention of the Employer, mere access to even confidential financial data is not sufficient to qualify one as a confidential employee. Ohio State Legal Services Assn., supra; Planned Parenthood Association of Miami Valley, Inc., 217 NLRB 1098 (1975). Accordingly, I find that Bennett, Vance and Darr are not confidential employees and I shall include them in the unit herein found appropriate.

Supervisory Issues

a. Rosaleigh Vance

As previously indicated, the Employer, contrary to the Petitioner, would exclude Rosaleigh Vance as a supervisor within the meaning of the Act. Vance, according to Managing Director Logue, is the a.m. supervisor in the kitchen and reports to executive chef Kyle Shapiro.²² There are six or eight employees working with Vance in the morning and for a substantial percentage of time, Vance is the most experienced employee working in the kitchen.²³ In the performance of her duties, Vance acts as the lead cook in the kitchen and is responsible for coordinating the kitchen's breakfast food preparation work.

The kitchen's staff is composed of a combination of full-time and seasonal employees and, on weekends, high school students. These individuals are employed as food preparation employees, dishwashers, and banquet preparation employees. Vance has no authority to hire, fire or evaluate employees.²⁴

In support of its contention that Vance is a supervisor within the meaning of the Act, the Employer avers that Vance has the authority, which requires the use of independent judgment, to responsibly direct employees in their work, to schedule employees, to send employees home if work is slow and to notify higher management of any "problems" that are encountered in the kitchen, including personnel matters.

²² The record reveals that in the afternoon either executive sous chef Todd Zais or sous chef Chris Tropo is in charge of the kitchen. The parties stipulated and I find that Shapiro, Zais and Tropo are supervisors within the meaning of the Act since they have the authority to responsibly direct the work of employees using independent judgment.

²³ Vance begins work at 5:30 a.m. and is responsible for opening the kitchen. Higher management staff do not report to work until late morning.

²⁴ If an individual is being considered for hire in the kitchen, higher management may ask Vance whether she ever worked with the person before and, if she has, whether the person, in Vance's opinion, was a good and dependable worker.

Further, the record reveals that on one occasion, Vance complained to food and beverage manager Brian Forsythe that a dishwasher was "lazy" and that she did not want to work with him. Apparently, the dishwasher was removed from the kitchen's staff. It is unclear whether the dishwasher was terminated by the Employer.

Vance is responsible, in part, for the scheduling of employees during the Resort's peak seasons.²⁵ Vance's discretion in scheduling is limited both by the Employer's policy that full-time employees are to receive preference over seasonal employees and by the small number of employees needed each day and the job classification of employees. Vance's discretion is further limited by the anticipated guest demand for breakfast on any given day. Thus, if no conventions are scheduled for the Resort and the guest census is expected to be low, the number of employees needed to work is lower. Management informs Vance of the anticipated guest census each week for the following week, and higher management reviews the prospective employee work schedule to ensure that a proper level of kitchen staff is scheduled to work. Vance is given the authority to send employees home if work is slow, but her discretion in this area is again limited by the type of work needed in the kitchen and the mix of staff on duty, i.e. full time or seasonal. In directing the work of the kitchen staff, Vance is merely responsible for ensuring that the flow of work is proceeding without undue interruption; for example, a dishwasher may be asked to assist the banquet preparation employees or a cook may be asked to clean tables. Finally, the record reveals that Vance does inform higher management of "problems" in the kitchen such as the kitchen being in "disarray" from the night before. These reports appear to be anecdotal in nature only and the record does not reveal what, if any, action higher management takes when receiving this information.

With respect to the supervisory status of Vance, it is well established that the party asserting supervisory status has the burden of proving such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB No. 150, slip op. at p. 1 (2000); North Jersey Newspapers Company, 322 NLRB 394 (1996); Tucson Gas & Electric Company, 241 NLRB 181 (1979). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a

²⁵ Vance does not schedule during the off seasons since management personnel are scheduled to perform kitchen duties during these periods. Vance's superiors do the scheduling at these times.

supervisor loses the protection of the Act. See e.g. Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra, slip op. at p. 1. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Moreover, in enacting Section 2(11) of the Act, Congress stressed that only persons vested with “genuine management prerogatives” should be considered supervisors, as opposed to “straw bosses, leadmen . . . and other minor supervisory employees.” Chicago Metallic Corp., 273 NLRB 1677, 1688 (1985). In this case the burden of establishing supervisory status with respect to Vance and Smith, which rests with the Employer, has not been met.²⁶

With respect to Vance, the Employer contends that Vance’s role in scheduling employees and her authority to send them home if work is slow, together with her being responsible for the overall coordination of the food preparation work in the mornings at the Resort, including her authority to direct employees in their work and to assign them specific job tasks, evidences her supervisory authority. However, contrary to the contention of the Employer, as detailed above, I find that Vance’s function in scheduling employees in the manner detailed above is routine and clerical in nature and does not require the exercise of discretionary independent judgment sufficient to confer supervisory status upon her, particularly in view of the fact that her work schedules are submitted to higher management for review and approval. In addition, the authority to permit employees to leave work early has been found to be insufficient

²⁶ Section 2(11) of the Act defines a “supervisor” as:

any individual having a authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Except as discussed herein, there is no contention or evidence that the individuals whose status as supervisors is in dispute possess or exercise any other indicia of supervisory status.

to confer supervisory status. North Jersey Newspapers Company, supra; Northcrest Nursing Home, 313 NLRB 491, 505 (1993).

The record indicates that Vance's assignment and direction of work is based upon her experience, rather than upon a true exercise of supervisory authority. See PECO Energy Company, 322 NLRB 1074, 1082 (1997); S.D.I. Operating Partners, L.P., 321 NLRB 111 (1996); Chevron Shipping Co., 317 NLRB 379, 381-382 (1995); Brown & Root, Inc., 314 NLRB 19, 20 (1994); Hexacomb Corporation, 313 NLRB 983, 984 (1994). That is, Vance is primarily responsible, because of her skills and expertise, for ensuring that the Employer's operating procedures in the kitchen are followed. Thus, as a leadperson, Vance provides direction and guidance to the other kitchen employees, relatively low skilled employees, involved in particular tasks based upon her experience, skills and training. In this regard, it is noted that Vance's discretion in the assignment of work is limited by the mix and number of employees on the kitchen crew and the limited number of job tasks to be performed by any of the crew. The responsibilities of Vance in this regard involve no real managerial discretion that would require the exercise of independent judgment.

Finally, the involvement of Vance in personnel matters does not render her a supervisor within the meaning of Section 2(11) of the Act. The record evidence clearly indicates that Vance does not discipline other employees nor does she effectively recommend disciplinary action. The role of Vance is merely to verbally report incidents of unacceptable behavior to upper management. There has been no showing that Vance has ever given an anecdotal report that has had any impact upon an employee's job status without independent review by higher management. In this regard, the Board has consistently held that reports of unacceptable behavior or work performance which do not result in any personnel action, or if they do, where such action is not taken without independent investigation by others, as is the case herein, is not sufficient to confer supervisory status. Illinois Veterans Home at Anna L.P., 323 NLRB 890 (1997); North Jersey Newspapers Company, supra; S.D.I. Operating Partners, L.P., supra at 111-112.

Based upon the above, and the record as a whole, I find that Rosaleigh Vance is not a supervisor within the meaning of the Act and I shall therefore include her in the unit herein found to be appropriate.

b. Judy Smith

As previously indicated, the Employer, contrary to the Petitioner, would exclude Judy Smith as a supervisor within the meaning of the Act.

Smith, according to Managing Director Logue, is a ski lift ticket supervisor two days a week whenever her superior Sherry Harrold is not on duty.²⁷ During prior summer seasons, Smith worked in the golf operations. Recently, in mid-June, according to the Employer, Smith was promoted to the position of golf shop supervisor. The Employer avers that the promotion was caused by the resignation of the golf professional who, together with Harrold, were the two supervisors in the golf operation.²⁸ Despite her recent promotion and despite her title as ski ticket sale supervisor, Smith, unlike the other members of the Employer's supervisory staff, who are salaried, is an hourly paid employee.

Employer Resident Manager Sam Collins testified generally that Smith is "in charge" of the entire ski lift ticket sales operation, including the scheduling of employees, cash handling, computer problems and communication with technical support, and employee attendance²⁹ and discipline. However, it is apparent from Collins' testimony that any action Smith might have occasion to take with respect to personnel matters would only be done after consultation with Harrold and/or higher management authority. In this regard, Collins could not provide any specific instances wherein Smith injected herself in any personnel matters, including the hire,

²⁷ Harrold's title is assistant manager golf operations. In the winter ski season, Harrold is the ticket sales supervisor at the ski area and during the summer she is a supervisor in the golf operations. The parties stipulated, and I find, that Harrold is a supervisor within the meaning of the Act since she has the authority, utilizing independent judgment, to responsibly direct employees.

Neither Harrold nor Smith testified at the hearing.

²⁸ The record contains no information concerning Smith's duties and responsibilities as the golf shop supervisor.

²⁹ According to Collins, if business is slow, Smith has the authority to send employees home.

fire or discipline of employees. Apart from the above, there is no evidence contained in the record concerning Smith's alleged supervisory authority.

With respect to the alleged supervisory status of Judy Smith, the record contains virtually no detailed evidence, other than some general testimony by Logue and Collins, concerning the supervisory authority Smith is alleged to possess and exercise. In fact, it appears that Smith, with respect to personnel matters and in her capacity as ski supervisor, does not take any action on her own without first consulting with her immediate supervisor, Harrold, or higher management. In these circumstances, I cannot conclude that the Employer has met its burden of establishing that Smith is a supervisor within the meaning of the Act. Accordingly, I shall include Judy Smith in the unit herein found to be appropriate.

c. **Amy Poling**

As previously noted, the Employer, contrary to the Petitioner, would exclude Amy Poling as a supervisor within the meaning of the Act.

Poling has been employed by the Employer for approximately four years and has been designated as the campgrounds/reservation supervisor for approximately one year. She reports to Audrey Nelson, the front office manager.³⁰ During the summer season, Poling works at the campgrounds area of the Resort between the hours of 8 a.m. to noon, Monday through Fridays. During the afternoons, until approximately 4:30 p.m., she works at the main lodge in the guest reservation office. In the winter season, Poling works exclusively at the main lodge.

In the performance of her duties, Poling is responsible for the overall supervision of the camp grounds and is responsible for handling all camp ground reservation requests, accepting and crediting all advanced deposits made by the guests for campground reservations, checking guests in and out of the campgrounds and ensuring the campground area is properly maintained by the campground staff.

³⁰ Nelson reports to Resident Manager Collins.

The campground staff is comprised of approximately four summer seasonal campground attendants, who are responsible for maintaining and cleaning the restrooms and public areas. The campground reservation staff is comprised of two summer seasonal employees and one part-time winter employee who work at the main lodge and accept and process the campground reservation requests. Poling also performs these job tasks, particularly during the winter season.

Poling is responsible for scheduling the campground attendants and ensuring that all shifts are properly staffed. Employees are scheduled on a rotating shift basis. Poling does not schedule the campground reservations. This task is performed by Nelson. Poling is responsible for ensuring that the campground reservationists are "in balance" at the end of the workday in terms of payments received from the guests for the campground rental fees, and for resolving all customer complaints both with respect to the reservation and fee payment process, and in any matters occurring at the campground site.

At the end of the campground summer season, Poling will be expected to conduct evaluation reviews of the campground attendants and to place those reviews in the employees' personnel folders. It appears that the primary areas in which the campground attendants are evaluated is attendance and dependability in performing assigned job tasks. With respect to the campground reservationists, it appears that both Poling and Nelson evaluate these employees on a joint basis.

Nelson testified that Poling has the authority to effectively recommend the hiring and firing of employees and to discipline employees. In this regard, the record reveals that Poling has not had occasion to recommend the termination of any employee. According to Nelson, Poling has had the occasion to orally reprimand an employee on one occasion. If Poling recommended the imposition of more severe discipline, these recommendations, according to Nelson, would be reviewed by herself and Collins. Whether these recommendations would be accepted by higher management, without independent investigation, is unclear. Nelson further testified that Poling can effectively recommend the hire of employees, and that her

recommendations concerning the hire of two campground attendants were accepted by Nelson and Collins. However, Nelson also testified that Poling recommended the hire of an individual named Lee Coleman for an open campground attendant position. This recommendation was not accepted by either Nelson or Collins because Coleman had worked for the Employer in the past and had “problems”.³¹ Consequently, Coleman was not hired by the Employer despite Poling’s recommendation to the contrary.

Based on the above and the record as a whole, I cannot conclude that the Employer has met its burden of establishing that Poling is a supervisor within the meaning of the Act. In this regard, it appears that any recommendations she may make concerning the hire, fire and discipline of employees are reviewed by higher management and, based on the Coleman incident wherein Poling’s recommendation was not followed, I cannot conclude that Poling can make effective recommendations in these areas. Further, the fact that she may orally counsel and evaluate employees is insufficient to confer supervisory status upon her since there has been no showing that such counseling and evaluations have any role in affecting the job status of employees. See e.g. Elmhurst Extended Care Facilities, Inc., 329 NLRB 535 (1999), where the Board reiterated its prior decisions holding that the completion of evaluations which do not directly lead to personnel actions affecting wages or the job status of the employees being evaluated does not confer supervisory status. Finally, the record does not establish that Poling exercises independent judgment in the scheduling of employees and in her direction of their work. Rather, the record indicates that her direction involves routine decisions that are typical of leadpersons who are found not to be statutory supervisors. See e.g. Arlington Electric, Inc., 332 NLRB No. 74 (2000); S.D.I. Operating Partners, L.P., supra.

Accordingly, I find that Poling is not a supervisor within the meaning of the Act and I shall include her in the unit herein found to be appropriate.

³¹ Nelson testified that Poling was aware of Coleman’s prior negative work experience for the Employer when she recommended that he be hired.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

All full-time and regular part-time employees, including ski ticket sellers, ski rental shop employees, ski lift operators, snow groomers, snow-making employees, ski bus drivers, ski nursery employees and ski parking lot attendants employed by the Employer at the Canaan Valley Resort; excluding guards, professional employees and supervisors as defined in the Act.

Voter Eligibility Formula for the Ski Seasonal Employees and Type of Election to be Conducted

There remains for consideration the issue of whether the election should be delayed until at the seasonal peak of the ski season given that approximately 50 percent of the unit will not be employed until that time, or whether an immediate election should be directed in which a voter eligibility formula is devised for the ski seasonal employees thereby balancing the goals of holding a prompt election while also enfranchising the greatest number of eligible voters whose regularity and currency of employment demonstrates that they have a substantial and continuing interest in the unit. For the reasons set forth below, I shall direct an immediate election and devise a voter eligibility formula for the ski seasonal employees.

As noted previously, in nontraditional industries, such as the Employer's operation at the Resort, involving year-round operations with a fluctuating need for extra employees and/or various seasonal peaks, the Board has reasoned that a prompt election is preferred in those circumstances where a substantial percentage of the unit is employed on the eligibility date and has devised appropriate voter eligibility formulas for those extra or seasonal employees who are not currently employed in view of the Employer's seasonal operations. There is no set formula required to be adopted, only that the formula that is devised be reasonable given the circumstances of each case to ensure that the greatest number of seasonal employees who have a sufficient regularity and currency of employment are enfranchised and the employees with substantial periods of employment during peak periods are not excluded. See, for example, Saltwater, Inc., supra (employees eligible if they either met the standard Board

eligibility criteria or worked for the employer for 30 or more days during the 12 months preceding the eligibility date); Daniel Ornamental Iron Co., Inc., supra, (employees included who worked a minimum of 15 days in either of the two three-month periods immediately preceding the date of the issuance of the direction of election and who have not been terminated or voluntarily quit).

In the instant case, an immediate election is preferred given the substantial number of employees currently employed, which number includes approximately 30 to 40 summer seasonal employees who will not be then employed if the election was delayed until at or near the peak of the ski season. In addition, I note that neither party opposes the holding of an immediate election. Accordingly, noting further that many ski season employees work only one or two days a week on a regular basis, I find those ski seasonal employees who have worked at least 15 days during the previous ski season (November 2001 through March 2002), and who have not been terminated for cause or have not voluntarily quit, to have exhibited a sufficient regularity and currency of employment to warrant their eligibility to vote in the election directed herein.³²

Finally, the Employer maintains that a mixed manual-mail ballot election is necessary to be conducted to ensure the participation of all unit employees. I find merit to the Employer's request. Certainly, those employees currently working can vote manually and a manual election date and site will be set for them. With regard to the ski seasonal employees and those summer seasonal employees, who are not or will not be employed on the date of the election, the Employer suggests that many of these employees may be scattered over a wide geographical area at the time of the election and may not be, realistically, able to vote in a manual election. The record is inconclusive in this regard. Accordingly, in view of the fact that

³² Ski instructors and ski patrolmen meeting the criteria set forth above shall be eligible to vote subject to challenge. In addition, I note that the potential exists that certain summer seasonal employees may have been laid off by the eligibility date. Accordingly, I find those summer seasonal employees who are not employed on the payroll period eligibility date but who have worked 15 days during the four-month period, May 2002 through August 2002, and who have not been terminated for cause or who have not voluntarily quit, to have exhibited a sufficient regularity and currency of employment to warrant their eligibility to vote in the election herein.

the ski seasonal employees represent approximately 50 percent of the unit and noting that a mail ballot election for these employees and any summer seasonal employees not working as of the election date will ensure that they will have a greater likelihood to vote, I shall order that an election by mail ballot be conducted for those employees not currently working on the eligibility date or who the Employer anticipates will not be working on the election date and who otherwise meet the criteria in the eligibility formula set forth above.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.³³ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible to vote are those employees in the unit who were employed 15 days during the period November 2001 through March 2002, or 15 days during the period May 2002 through August 2002, and have not been terminated for cause or voluntarily quit. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have

³³ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.³⁴ Those eligible shall vote whether or not they desire to be represented for collective bargaining by Laborers' Local 814, affiliated with Laborers' International Union of North America, AFL-CIO

Dated at Pittsburgh, Pennsylvania, this 29th day of July 2002.

/s/ Gerald Kobell

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
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³⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, and designating based on the criteria set forth herein whether they are to vote manually or by mail ballot, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before August 5, 2002. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.